

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| DEBRA L. WEBER | : | CIVIL ACTION |
| | : | |
| v. | : | NO. 05-1589 |
| | : | |
| JO ANNE BARNHART, | : | |
| Commissioner of Social Security | : | |
| Administration | : | |

Diamond, J.

October 28, 2005

MEMORANDUM

Plaintiff Debra Weber asks me to reverse the Social Security Commissioner's denial of her claim for Disability Insurance Benefits under Title I of the Social Security Act. 42 U.S.C. § 401 et seq. The Commissioner and Plaintiff have both moved for summary judgment. Adopting and Approving the Magistrate Judge's Report and Recommendation, I deny Plaintiff's Motion and grant summary judgment in the Commissioner's favor.

FACTUAL AND PROCEDURAL HISTORY

Plaintiff Debra Weber was 40 years old at the time of the Administrative Law Judge's decision, holds a GED, and worked as a shipper/packer for over 16 years, loading and unloading UPS and truck shipments. (R.77, 82). She last worked in March, 2002. (R.77).

On August 27, 2003, Plaintiff filed a DIB application, alleging that she has been disabled since March 21, 2002, due to failed back syndrome, post laminectomy syndrome, and nerve damage in her leg. (R. 47-49, 76). On November 6, 2003, the Social Security Administration

denied her benefits application. (R. 25-28). On December 17, 2003, Plaintiff filed a timely request for a hearing. (R. 29).

The ALJ conducted a hearing on October 8, 2004, at which Plaintiff testified. (R. 39, 259-273). On October 9, 2004, the ALJ denied the application, finding that Plaintiff was not disabled because she had the residual functional capacity to perform light and sedentary work, and so could perform a significant number of jobs existing in the regional and national economies. (R. 19-21). The Appeals Council determined that there was no basis for granting review of the ALJ's decision, which thus became final. 42 U.S.C. § 405(g). (R. 5-8).

On April 6, 2005, Plaintiff filed her Complaint in this Court seeking review of the Commissioner's decision. Both she and the Commissioner filed cross motions for summary judgment. I referred the matter to a Magistrate Judge, who, on September 27, 2005, recommended that I grant Commissioner's Motion and deny the Plaintiff's Motion. On September 30, 2005, Plaintiff filed Objections to the Report and Recommendation. The Commissioner filed a Response to the Plaintiff's Objections on October 18, 2005.

STANDARD OF REVIEW

Under the Social Security Act, I may not undertake *de novo* review of the Commissioner's decision, nor may I re-weigh the evidence presented to the ALJ. 42 U.S.C. §405(g); Monsour Medical Center v. Heckler, 806 F.2d 1185, 1190 (3d Cir. 1986). Rather, if substantial evidence supports the Commissioner's decision, I am obligated to uphold it. See 42 U.S.C. §405(g); Montes v. Apfel, No. 99-2377, 2000 U.S. Dist. LEXIS 4030, *2 (E.D. Pa. Mar. 27, 2000) (citing Richardson v. Perales, 402 U.S. 389, 401 (1972)). "Substantial evidence" is

“that which would be sufficient to allow a reasonable fact finder to reach the same conclusion; while it must exceed a scintilla, it need not reach a preponderance of the evidence.” Montes at *2; see also Jesurum v. Sec’y of U.S. Dept. Of Health and Human Services, 48 F.3d 114, 117 (3d Cir. 1995). The ALJ must consider all the relevant evidence presented and indicate the evidence he rejected and why he rejected it in arriving at his decision. See Adorno v. Shalala, 40 F.3d 43, 48 (3d Cir. 1994); Cotter v. Harris, 642 F.2d 700, 704 (3d Cir. 1981).

The extent of District Court review of a Magistrate Judge’s Report is committed to the Court’s discretion. See Jozefick v. Shalala, 854 F. Supp. 342, 347 (M.D. Pa. 1994); see also Thomas v. Arn, 474 U.S. 140, 154 (1985); Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984); Heiser v. Ryan, 813 F. Supp. 388, 391 (W.D. Pa. 1993), aff’d, 15 F.3d 299 (3d Cir. 1994). The District Court must review *de novo* those portions of the Report to which objections are made. 28 U.S.C. § 636 (b)(1)(c) (2004); see generally Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984). The Court may "accept, reject or modify, in whole or in part, the magistrate’s findings or recommendations." Brophy v. Halter, 153 F. Supp. 2d 667, 669 (E.D. Pa. 2001).

DISCUSSION

To prove disability, a claimant must demonstrate that: 1) she is not currently engaged in “substantial gainful activity,” as defined in the regulations; 2) that she currently suffers from a “severe impairment;” 3) that her disability meets or equals an impairment listed in 20 C.F.R. Pt. 404, Subpt. P. App. 1; and (4) that she does not have sufficient residual functional capacity to perform her past relevant work. 20 C.F.R. § 404.1545. At the fifth step of the analysis, the Commissioner considers a claimant’s “ability to perform work,” along with age, education, and

past work experience to determine whether claimant “is capable of performing other work which exists in the national economy.” 42 U.S.C. § 423(d)(2)(A); 20 C.F.R. § 404.1520(f) - (g).

Here, the ALJ found that Plaintiff has the residual functional capacity to perform light work. (R.21). Accordingly, even though the ALJ agreed that Plaintiff has a severe physical impairment, he also found that the impairment does not render the Plaintiff disabled. Id. The Magistrate concluded that the ALJ’s findings were supported by substantial evidence. (R&R at 24). Plaintiff objects to the Report and Recommendation, arguing that the ALJ erred in rejecting the opinion of one of Plaintiff’s doctors as to her residual functional capacity. Plaintiff also objects to the Magistrate’s analyses of: 1) the ALJ’s discussion of her work history; and 2) the ALJ’s purported failure to discuss the alleged side effects of her medication. These errors, argues Plaintiff, caused the ALJ improperly to reject her subjective complaints about her symptoms.

It is evident that Plaintiff objects to the Magistrate’s refusal to overturn well-supported factual findings made by the ALJ. The Magistrate, of course, acted properly in declining to sit as a second factfinder. Accordingly, I accept his thorough and well-reasoned Report and Recommendation.

I. Residual Functional Capacity

The ALJ evaluated the August 28, 2002 report of Dr. James Stephenson, granting his views “significant weight,” and discussing both the Plaintiff’s subjective complaints to the Doctor as well as the results of the Doctor’s physical examination. Plaintiff criticized the ALJ for failing to accept the Doctor’s conclusions respecting limitations on Plaintiff’s activities. (Pl. Obj. at 1-2; Tr. 149).

The Magistrate correctly noted that “[the ALJ] simply stated that he was according significant weight to [Dr. Stephenson’s] assessment to the extent it was consistent with the objective medical evidence of record.” (R&R 16). In recounting Plaintiff’s progress during 2002, the ALJ outlined how Dr. Stephenson’s “physical examination indicated an improvement [over earlier examinations].” (R.18). The ALJ then described the objective facts demonstrating an increase in Plaintiff’s range of motion and credited Dr. Stephenson’s testimony “to the extent it is well supported by the objective medical evidence.” Id. This was entirely permissible. See Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir. 1999). In these circumstances, I find that the ALJ’s residual functional capacity determination is supported by substantial evidence, including, in part, the opinion of Dr. Stephenson.

II. Plaintiff’s Subjective Complaints

Plaintiff also argues that the ALJ should have credited her testimony respecting her physical limitations. As the Magistrate observed, however, the ALJ “has the right, as the fact finder, to reject partially, or even entirely... subjective complaints if they are not fully credible.” (R&R at 20, quoting Weber v. Massanari, 156 F.Supp.2d 475, 485 (E.D. Pa. 2001)). Moreover, I am obligated to accord an ALJ’s credibility findings great deference, especially where he has had the opportunity to assess the demeanor of a witness. See Atlantic Limousine Inc. v. NLRB, 243 F.3d 711, 718 (3d Cir. 2001). Here, the ALJ considered numerous factors in determining the credibility of Plaintiff’s complaints, including the extent of Plaintiff’s daily activities, her limitations as she described them to her doctors for treatment purposes, the sporadic nature of Plaintiff’s visits for treatment, and her testimony during the hearing. (R. 18-19, R. 21). Having

considered the ALJ's discussion of these factors, the Magistrate concluded that the ALJ's rejection of her subjective complaints was supported by substantial evidence. (R&R at 23-24). I agree.

A. Plaintiff's Work History

Plaintiff first challenges the omission of a discussion of her work history from the ALJ's decision. She notes the Magistrate's statement that "20 C.F.R. § 404.1529 does not even list work history as one of the necessary factors to be considered in judging credibility," and urges me to reject the ALJ's assessment of her credibility. (Pl. Obj. at 3; R&R at 23). Although 20 C.F.R. §404.1529 includes "prior work record" as a factor to be considered in examining "all of the evidence presented," it is not included in the enumerated list of "factors relevant to your symptoms." See 20 C.F.R. §404.1529(c). The ALJ explicitly discussed several of the enumerated factors in his decision, including Plaintiff's daily activities, frequency and intensity of pain, and treatment. (R.19). As I give "great deference" to the ALJ's credibility determination, I find that the ALJ supported his credibility determination with substantial evidence, even absent discussion of her work history.

B. Side Effects of Medication

Plaintiff also contends that in assessing her credibility, the ALJ failed explicitly to discuss the claimed side effects of her medication. Contrary to Plaintiff's suggestion, the Third Circuit does not require that the ALJ employ the actual words "side effects," but only that the ALJ explicitly consider the side effects themselves. See Stewart v. Secretary of HEW, 714 F.2d 287,

290 (3d Cir. 1983). Here, the ALJ explicitly addressed the specific side effects claimed by Plaintiff: her drowsiness, fatigue, and sleepiness. (R.19.) This satisfies both the requirements of 20 C.F.R. § 404.1529 and the standard set forth in Stewart. In addition, as “drowsiness often accompanies the taking of medication... it should not be viewed as disabling unless the record references serious functional limitations.” Burns v. Barnhart, 312 F.3d 113, 131 (3d Cir. 2002). Thus, the nature of the side effects does not impugn the ALJ’s finding that Plaintiff is not disabled. I therefore find that the ALJ’s analysis of the Plaintiff’s subjective complaints is supported by substantial evidence.

CONCLUSION

In sum, Plaintiff asks me to re-weigh the evidence and reject the ALJ’s credibility determinations. Because I find that substantial evidence supports the ALJ’s factual determinations, I overrule Plaintiff’s objections.

Accordingly, Plaintiff’s Motion for Summary Judgment is DENIED.

The Commissioner’s Motion for Summary Judgment is GRANTED.

The Report and Recommendation of United States Magistrate Judge Charles B. Smith is ADOPTED and APPROVED. An appropriate ORDER follows.

Paul S. Diamond, J.

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ORDER

AND NOW, this 28th Day of October, 2005, upon consideration of the Report and Recommendation of United States Magistrate Judge Charles B. Smith, Plaintiff's Objections, and Defendant's Response to Plaintiff's Objections, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED.

2. The Plaintiff's Motion for Summary Judgment is DENIED.

3. The Commissioner's Motion for Summary Judgment is GRANTED.

Judgment is entered in favor of Defendant, Jo Anne Barnhart, Commissioner of Social Security, and against Plaintiff, Debra L. Weber.

It is so ORDERED.

Paul S. Diamond, J.